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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,230	08/30/2001	John Whitman	4294.1US (98-1208.1)	2488

24247 7590 03/24/2004

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EXAMINER
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DICKEY, THOMAS L

ART UNIT	PAPER NUMBER
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2826

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/944,230

Applicant(s)

WHITMAN ET AL.

Examiner

Thomas L Dickey

Art Unit

2826

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: 14.Claim(s) rejected: 1,3,4,11-13 and 15-20.Claim(s) withdrawn from consideration: 2 and 5-10.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper filed 11/03/03.
10. ☐ Other: \_\_\_\_\_

*Minhloan Tran*  
**Minhloan Tran**  
**Primary Examiner**  
**Art Unit 2826**

Continuation of 5. does NOT place the application in condition for allowance because: Yates et al. 6,358,793 and Kikuchi 6,278,153 both show layers of photoresist with flat surfaces. That is to say both Kikuchi and Yates et al. tell us they are drawing a cross-section of a three dimensional device and then draw the tops of layers of photoresist as straight lines.

The question is whether one of ordinary skill in the art would recognize the flat surfaces of Yates et al. and Kikuchi as being "substantially planar."

The examiner's position is that one having ordinary skill in the art would understand "substantially planar" to be a general purpose term for a surface that is fairly flat along at least a part of its extent.

The applicant argues to the contrary that one having ordinary skill in the art would realize that layer of photoresist prepared as Kikuchi and Yates et al. prepare them would have "a variety of miniscule non-planar features." This may be so. If so, and if Applicant can eliminate said features, Applicant can overcome Kikuchi and Yates et al. by amending his claims by substituting the words "without any miniscule non-planar features," for the words "substantially planar." But the mere fact that it might be possible to make a surface flatter than Kikuchi and Yates et al. make theirs does not make their surfaces bumpy.

This examiner will not pass this application to allowance on the assumption that "substantially planar" actually means "without any miniscule non-planar features."